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Amy Pelletier

/Amy Pelletier/

8/17/2010

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Signature

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Jonathan Fanger Confirmation No.: 3611
 Serial No. : 10/664,575
 Filed : 9/17/2003
 Title : Drill Guide With Alignment Feature
 Art Unit : 3775
 Examiner : Waggle, Jr, Larry, E.

Mail Stop Patent Ext.
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

APPLICATIONS FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE
NOTICE OF ALLOWANCE

Dear Sir:

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) and provided with the Notice of Allowance dated May 17, 2010, the Applicants submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705.

This request is being submitted concurrently with the payment of the issue fee and complies with the relevant deadline specified in 37 C.F.R. 1.705. Thus, Applicants submit that this request is timely.

1. Payment of fee under §1.18(e) or §1.18(f)

Applicants hereby authorizes the Patent Office to charge the fee set forth in §1.18(e) or 1.18(f) and any other fees that may be due to Deposit Account 10-0750.

2. Statement of Facts

Applicants respectfully request that an additional 669 days of Patent Term Adjustment be added to the 464 days of additional patent term already calculated on PAIR, resulting in a total Patent Term Adjustment of 1133 days.

The patent term adjustment of 464 days included with the Notice of Allowance, based on PAIR, appears to be attributable to “A delay”. No “B delay” or “C delay” was identified. Applicant considers the PAIR “A delay” calculation of 464 days to be 157 days more than Applicant is entitled to for the reasons set forth below.

In addition, Applicant is entitled to 803 days of “B delay” adjustment and 23 days of “C delay” adjustment for the reasons set forth below.

2A “A Delay” Calculation

Applicants disagree with the USPTO’s determination of the “A delay” term adjustment. The errors in the USPTO “A delay” are set forth below. Applicant considers the “A delay” patent term adjustment to be 307 days, 157 days less than indicated by PAIR.

31 Days of Term Reduction

Applicant’s Notice of Appeal filed on 3/20/2007 was 31 days late. The Patent Office did not deduct 31 days for the late response. The Final Rejection was mailed on 11/17/2006. An amendment after final was filed on 1/16/2007 however this amendment was not entered by the examiner. Instead an advisory action was issued on 2/20/2007. A Notice of Appeal was filed 3/20/2007. Since the three month deadline to respond to the Final Rejection was 2/17/2007 and the Notice of Appeal was filed 3/20/2007, 31 days should have been deducted for a late reply.

79 Days Term Reduction

Two supplemental replies were filed after an RCE was filed on 2/16/2010. A supplemental declaration was filed on 3/17/2010 and an IDS was filed on 5/6/2010. Since both of these items were filed after the filing of the RCE, a reduction should have been applied by the USPTO. The supplemental declaration was filed 29 days after the RCE and the IDS was filed 79 days after the RCE. Since the time frame for the delay of the supplemental declaration and submission of the IDS overlap, 79 days should have been for late submission of the IDS, since the IDS was filed AFTER the supplemental declaration was filed.

47 Days Term Reduction

Applicant was credited with 47 days that Applicant was not entitled to. Applicant originally filed a response on 1/16/2007 to a final rejection issued on 11/17/2006. The response was not entered by the examiner. An advisory action was issued and Applicant then filed a notice of appeal on 3/20/2007. The patent office issued a non-final office action on 7/2/2007 and credited the Applicant with 47 days for the Patent Office's delay in issuing the office action within 4 months of Applicant's reply of 1/16/2007. Since the initial response filed on 1/16/2007 was not entered by the examiner and the patent office issued the office action within 4 months of the filing date of the notice of appeal on 3/20/2007, there was no patent office delay by issuing the office action mailed 7/2/2007, as the office action was mailed within 4 months of the filing of the notice of appeal.

2B "B Delay" Calculation

The "B delay" resulting from the application pending longer than three years is at least 803 days. Since the application did not issue within three years from the filing date (9/17/2003), Applicants are entitled to a "B delay" adjustment from the filing date (9/17/2003) to the filing of the first RCE on 6/2/2009, i.e. 803 days. Applicants understand that the United States Patent Office does not accept arguments concerning B delay until after the patent has issued. Applicants are simply pointing out that no credit for B delay has been acknowledged by the United States Patent Office to date.

2C Request for "C Delay" Adjustment under §1.702(e)

The present application was successfully appealed to the Board of Patent Appeals and Interferences and Applicant requests that the days of this excluded period be added to the patent term adjustment ("C delay"), pursuant to 37 C.F.R. §1.702(e). Applicant requests a patent term adjustment of 23 days for the period from the filing of the notice of appeal on 3/20/2007 to the date of the pre-appeal panel decision on 4/11/2007.

2D Other Circumstances

As required under 37 C.F.R. §1.705(b)(iii) and (iv)(B), Applicants confirm that, (1) this application is not subject to a Terminal Disclaimer; and (2) except for the Applicants' delay periods set forth above and noted in the PAIR calculation, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

Conclusion

For the reasons set forth above, Applicants request that the patent term adjustment for the present patent application be corrected to 1133 days.

Respectfully submitted,

By: /David A. Lane, Jr./
David A. Lane, Jr. (Reg. No. 39,261)

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(508) 880-8488
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